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Nebraska and Kansas Territories in American Legal Culture: Territorial Statutory Context

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Chapter Three

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Territorial Statutory Context

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In commemorating the sesquicentennial of the 1854 Kansas-Nebraska Act, it is important to understand not only the events that led to and were caused by its passage but also the very organic act itself.[1] This piece of national legislation caused great tension in the halls of Congress before being passed and also great tension in the very territories it organized after its passing. The most shocking example of these tensions was the mini civil war, commonly known as "Bleeding Kansas," which some historians suggest represents the first battles of the much greater Civil War. Nearly seventy years of similar territorial organic acts had been passed, but none had created such results. Was the text itself somehow different or revolutionary in form?

As this analysis will show, the Kansas-Nebraska Act of 1854 was not a revolutionary piece of legislation. Quite to the contrary, it closely followed the precedent of previous territorial organic acts. Even the doctrine of popular sovereignty, which clearly led to the tragic consequences, was not a new principle. The context of its application to Nebraska and Kansas, however, was new. The Kansas-Nebraska Act, though a very ordinary piece of legislation, and the geopolitical context surrounding its passage created a volatile catalyst for division, contention, and ultimately the attempted disintegration of the Union.

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It is formally titled "An Act to Organize the Territories of Nebraska and Kansas," and it is found in *Statutes at Large* 10 (May 30, 1854): 277–90. The Kansas-Nebraska Act consists of two parts: one dealing with the territory of Nebraska and the other dealing with the territory of Kansas. Except for the different geographical boundaries, the two parts of the statute are identical. This article will use examples from the Nebraska side of the document, sections 1–18. The text is reproduced here in the appendix following chapter 8.

Definitions and Structure

Before delving into the text of the Kansas-Nebraska Act, several terms require definition. First is the legal term *organic act.* Although used in many ways, *territorial* organic acts were pieces of legislation that geographically created and politically organized new lands within the United States. Early in the history of the Republic, what was to be done with the unorganized lands in the West was a topic of sharp debate. Would those lands be autonomous? If not, would they be controlled by state or federal governments? Also, would the residents thereof be accorded the same rights and privileges as other American citizens?[2] These are but a few of the issues posed. Starting with the Northwest Ordinance, or Ordinance of 1787, the first territorial organic act, the United States established the territory as a distinct geopolitical entity that functioned as a preliminary stage to statehood. Territories therefore served a transitional colonial role between unorganized land and official statehood. Their governments were similar to their state counterparts, but territorial officers were under the control of the federal government. They played an integral role in the development of the United States, and the organic acts that created them tell much of the political and pragmatic circumstances that framed their organization.

To better understand the organic act that created the territories of Nebraska and Kansas and its explosive effects, it must be examined in conjunction with those acts that preceded it. A simultaneous discussion of previous organic acts and how the

MAP 2. The American West after the Compromise of 1850.

Kansas-Nebraska Act relates to them places the 1854 act in its legal historical context. Although many territories were created before 1854, only a few organic acts represented significant new developments in the territorial system, or what might be called *foundational* organic acts. They illustrate the historic patterns and precedents into which the 1854 act fits. Significant organic acts that preceded the Kansas-Nebraska Act include the Northwest Ordinance (1787), the Orleans Territory Act (1804), the Wisconsin Territory Act (1836), and the New Mexico and Utah Territory Acts (1850) (see map 2). These together with the Kansas-

Nebraska Act will be analyzed thematically, considering geopolitical boundaries, territorial officials and government, and the territorial government's relationship with the federal government; qualifications for suffrage, elections, and eligibility to hold office; Indian affairs; and finally the question of slavery.[3] By tracing the development of policies and patterns in the territorial organic acts predating 1854, and how the Kansas-Nebraska Act compares with them, a greater understanding of the act itself and its ramifications can be achieved.

Geography, Political Office, and Federal Authority

One of the first issues dealt with in most territorial organic acts is a determination of geographical boundaries. The Kansas-Nebraska Act of 1854 does so in its first section, drawing a line westward from where the Missouri River intersects the 40th parallel north latitude to the border of the previously created Territory of Utah at the summit of the Rocky Mountains, then northward to the 49th parallel north latitude, then eastward along that parallel to the Minnesota state border, and finally southward along that border to the starting points. The territory encompassed by this border was to be the territory of Nebraska. The borders of Kansas Territory were defined in similar fashion (see map 3). Besides defining the borders of the territory, the act also added an important proviso: "That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States."[4] Not only were the present boundaries dictated by the federal government, but future changes to those boundaries were also completely under federal control.

This idea of federal control over territorial boundaries and the changing of those boundaries was alluded to in the first lines of the Northwest Ordinance of 1787. After pronouncing that the region would be governed initially as one single district, it stipulated that the area was "subject however to be divided into two districts

MAP 3. The American West after the Kansas-Nebraska Act of 1854.

as future circumstances may in the Opinion of Congress make it expedient."[5] Although it does not explicitly refer to geographic boundaries, the idea of federal control over spatial organization, whether political or territorial boundaries, is established. The proviso cited above from the Kansas-Nebraska Act, which is much more explicit in its purpose of controlling geographic territorial boundaries, is taken almost directly from the preceding organic acts that created the territories of Wisconsin (1836), New Mexico (1850), and Utah (1850). In fact, the proviso is identical to that found in the Wisconsin Territory Organic Act, and the only differ-

MAP 4. The American West after Nebraska Statehood (1867).

ence in New Mexico and Utah's is that the ending phrase in the Kansas-Nebraska proviso of "any other State or Territory of the United States" is changed to "any other Territory or State."[6]

A comparison of the original Nebraska Territory with the present state of Nebraska illustrates both the flexible nature of and federal control over territorial borders. The original Nebraska Territory included all of current Nebraska, most of Montana and Wyoming, and sections of Colorado, North Dakota, and South Dakota (see map 3). Then in 1861 the entire northern half of the territory was organized into Dakota Territory. The remaining Ne-

braska Territory was similar to the current state boundaries with the exception that the northern and southern borders extended westward to encompass much of present southern Wyoming (see maps 3 and 4). Current Nebraska borders were solidified in 1867 when it attained statehood. Utah, Oregon, Washington, Dakota, New Mexico, Kansas, and other territories underwent similar alterations in their borders. As areas became more populated, political circumstances changed and economies evolved. Territories were divided and reorganized by the federal government to better serve the transforming demographic. Federal control over such changes was necessary to accommodate the ever-changing needs of the expanding nation (see map 4).

As evident in many of their titles, organic acts were primarily meant not to organize territories geographically but to provide or establish a government. The selection of government officials, their duties and authorities, and a delineation of the powers of territorial governmental bodies encompass most of the language in territorial organic acts. As would be expected, these enumerations of rights and powers of government are both lengthy and complex, but a few key subjects deserve consideration—namely, the selection of territorial governors and secretaries, the powers vested in them, their term limits, and the balance between their overall authority to govern the territory versus the authority of the federal government in territorial affairs. The historic evolution of these political matters laid the grounds for the system of territorial government that both Nebraska Territory and Kansas Territory inherited.

Starting with the Northwest Ordinance, organic acts addressed the nature and powers of the governorship. The Ordinance of 1787 established the following guidelines: the governor holds the executive authority in the territory, including the power to approve or veto legislation; the governor is federally appointed; the governor's service is restricted to a term limit; the governor may be removed by federal authority; and the governor acts as the commander-in-chief of the militia and appoints all officers under the rank of general officers.[7] Established as such in 1787, gubernatorial powers

and duties had changed surprisingly little by 1854. The only major alterations were in the 1804 Orleans Territory Act's addition to the governor's powers to "grant pardons for offences against the said territory, and reprieves for those against the United States."[8] Subsequent organic acts retain this exact wording. Also, the New Mexico Territory Act of 1850 increased the governor's term from three to four years.[9] Despite these minor modifications, the duties and powers of the governor remained much the same in all organic acts from 1787 through 1854 and in large part retained the same phraseologic and semantic forms.

The Kansas-Nebraska Act's policies related to the territorial secretary, the governor's stand-in, also followed the traditions of previous organic acts. The concepts of federal appointment or removal, similar to those of the governorship, and term years are found in nearly identical form throughout those organic acts preceding it. Differences occurred from the Northwest Ordinance apportioning federal appointment and the power to release the secretary to Congress, whereas the rest of the organic acts (including Kansas-Nebraska) gave that power to the president. In addition, the Kansas-Nebraska Act changes the term for the secretary from four to five years. In essence, the principles remained the same, with the major responsibility of the secretary to "record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the Acts and proceedings of the Governor in his executive department," and then to transmit those reports to various individuals in the federal government.[10] This clause, taken from the 1854 act, is identical to the 1850 New Mexico Territory and Utah Territory acts and nearly identical to the three other noteworthy organic acts previously discussed.[11] Furthermore, the secretary's duty to "execute and perform all the powers and duties of the Governor" in case of death or absence as enumerated in the Kansas-Nebraska Act is with but one exception found in all the previous organic acts.[12] The territorial secretary filled a largely administrative role, but stood next in line for gubernatorial control over the territory. Hence the filling of this office was met with all the political maneuvering and intrigue

brought to its counterpart, the governorship, and like the governor the secretary was subject to federal appointment.

As already implied by the congressional or presidential power to appoint and remove governors and secretaries from office, these territorial officials were kept on a relatively short leash. The exact wording used in the 1787 Northwest Ordinance of "unless sooner revoked by Congress" and maintained until the 1854 Kansas-Nebraska Act's "unless sooner removed by the President of the United States" served as a constant political and practical reminder of the federal government's ultimate authority in territorial matters.[13] In addition to the governor and secretary, a territory's chief justice, associate justices, U.S. attorney, and U.S. marshal were all under the same federal control of presidential appointment and removal. The power to pass legislation was restricted by the superseding authority of the Constitution of the United States.[14] Other limitations, such as being subject to federal taxes, not interfering with the primary disposal of land by the federal government, and not taxing property of the United States, were also essential provisions in organic acts from 1787 onward.[15]

Federal control over territorial boundaries added to the weight of federal authority within the territories—Kansas and Nebraska included. Subsequent state governments faced similar limitations of power, but not to the extent at the territorial level. Territorial governments had immediate control over local affairs and legislation, but this control was ultimately trumped by either explicit federal authority over matters as defined in the corresponding organic act or by presidential and congressional powers to remove territorial officials from office. The U.S. government was willing to admit new territories into the Union, but only under strict federal supervision. Thus territories basically functioned under a colonial apprenticeship prior to statehood.

Requirements to Vote and Hold Office

Of all the events associated with the Kansas-Nebraska Act, voter fraud and outright violence surrounding the electoral process are perhaps the best known. Despite its unique outcome, the

1854 act closely followed the electoral patterns previously set forth by organic acts whose elections had gone more smoothly. The Northwest Ordinance restricted voter qualifications to "free male inhabitants of full age" who met certain landownership and residency regulations.[16] The Orleans Territory Act of 1804 was even more restrictive, eliminating suffrage altogether and leaving the appointment of the thirteen-member legislative council to the president.[17] Over the next thirty years, suffrage requirements as reestablished in organic acts became progressively less exclusive, and with the Wisconsin Territory Act of 1836 provisions, voter qualifications evolved to serve as the Kansas-Nebraska Act's precedent. Unlike previous acts—the Northwest Ordinance (1787), Orleans Territory Act (1804), Missouri Territory Act (1812), Florida Territory Act (1822), and Michigan Territory Act (1823)—which required combinations of landownership, payment of taxes, or years of previous residence to vote, the 1836 Wisconsin Act opened suffrage to "every free white male citizen of the United States, above the age twenty-one years, who shall have been an inhabitant of said Territory at the time of its organization."[18] This was altered in the Kansas-Nebraska Act to free white male inhabitants who were "actual resident[s] of said Territory."[19] Wisconsin required prior residency, but Kansas did not. As will be shown, it was not the age or racial requirements that caused the election time violence in Kansas but rather this issue of actual sustained residency.

The participation of nonresidents in the Kansas elections was the root cause of most of the violence. If blame for this voter fraud is to be placed on the Kansas-Nebraska Act, then the most intuitive assumption would be that the 1854 act did not detail how to determine residency, a requirement to vote. Oddly, the document is quite explicit in determining the number of residents before the first election. In the footsteps of its Wisconsonian, New Mexican, and Utahan counterparts from 1836 and 1850, Section 4 of the Kansas-Nebraska Act called for the governor to enact a census before the first election.[20] Not only did it require an enumeration of inhabitants to determine the number of territorial representa-

tives as did the Wisconsin Territory Act and the two 1850 acts, but it also specifically called for a numbering of the "qualified voters of the several counties and districts of the Territory." In this way, the Kansas-Nebraska Act was actually more specific and careful than the three previous acts. Therefore, there was no defect or oversight in the 1854 act that made voter fraud easier. In fact, the 1854 act had more safeguards than its predecessors had. It was not the lack of preventative measures within the act that allowed for widespread voter fraud in Kansas; rather, it was the lack of enforcement of provisions that the act did contain.

Just as voting qualifications became progressively more inclusive following the Ordinance of 1787, the requirements to hold office followed a similar evolution. Stipulations established in the Northwest Ordinance allowing a possible representative to serve in the lower legislative chamber were much more restrictive than the requirements to vote: "*Provided* that no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years and be a resident in the district or unless he shall have resided in the district three years and in either case shall likewise hold in his own right in fee simple two hundred acres of land within the same."[21] Prospective legislators had to own two hundred acres of land in the respective district and have been either U.S. citizens or residents of the district for three years. The qualifications for holding other offices in the Northwest Territory Assembly and Council were even higher.[22] About two decades later, with passage of the Orleans Territory Act, a presidentially appointed territorial legislature was required to have resided for at least one year in the territory, own real estate, and not have previously held a paid territorial position.[23] Over the next fifty years, territorial organic acts saw the dropping of both the landownership and previous residency requirements as eligibility for all offices in territorial governments. Following this evolution, the Kansas-Nebraska Act allowed for all white male residents of the territory who were at least twenty-one years old and either were, or swore an oath to become, a U.S. citizen to be elected to "any office within the said Territory."[24]

Political opportunity had increased from including a few select wealthy landowners in 1787 to a much broader, though not yet all-inclusive, demographic in 1854.

Indian Affairs and Territories

Another section of the Kansas-Nebraska Act that can be tied directly to previous organic acts is its treatment of Indian affairs. Patterned almost word for word after the 1836 Wisconsin Territory Act, section 1 of the Kansas-Nebraska Act presents three primary principles concerning Indian relations:

> *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory be expected out of boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.[25]

First, Indians retain their rights of person and property as long as they are protected by treaty with the United States. It is implied, however, that these rights are temporary and may be altered in the future. A similar contradictory juxtaposition of Indian rights and federal power to revoke those rights was also present in the Northwest Ordinance. It states, "The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property,

rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress."[26] The Kansas-Nebraska Act's simultaneous assertion of Indian rights while making possible future retraction of these same rights was established in more than a century of treaty precedents.

Second, Indian rights, lands, and properties were to be protected, but only as long as desired by the federal government. Indian lands claimed by treaty with the United States would take no part in the new territories of Nebraska and Kansas unless otherwise consented to by the tribe. Indian nations had to approve land deals for fee simple titles to individual land holders to be recognized. And third, the federal government retained its previous authority over and power to interact with Indian tribes. Again, federal authority is asserted in territorial matters through organic acts.[27]

The Issues of Slavery and Popular Sovereignty

Of all the issues addressed in territorial organic acts, the most volatile was that of slavery. How this issue was addressed before 1854 made it all the more explosive in the Kansas-Nebraska Act. Its provision drew significant attention. Clauses and provisos dealing with slavery appeared in the very first territorial organic act in 1787. Article 6 of the Northwest Ordinance stated clearly and without hesitation, "There shall be neither Slavery nor involuntary Servitude in said territory."[28] This explains why the 1836 Wisconsin Territory Act makes absolutely no mention of slavery, since Wisconsin was carved out of the Old Northwest. It was a moot point because the Northwest Ordinance had already decided the issue for that entire geographic region.

Farther south, and outside of the Northwest Ordinance's authority, the situation became more complicated. Section 10 of the Orleans Territory Act included three separate clauses on the question of slavery. First, no slaves could be imported into Orleans Territory from foreign ports. Second, slaves that had been imported to U.S. ports after May 1, 1798, were prohibited from being brought into Orleans Territory. This left open the possibility of bringing slaves into the Territory if they were enslaved and

in the United States before 1798, and this led to the third clause, which confined such importations to American citizens who were the "bona fide owner of such slaves or slaves" and planning to settle.[29] Slavery had not been completely prohibited, but some restrictions had been adopted.

Later, as tensions continued to increase over this issue, a compromise of sorts was tried in the Missouri Territory Act of 1820. Section 8, its last paragraph, reads, "*And be it further enacted*, That in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the state, contemplated by this act, slavery and involuntary servitude . . . is hereby, forever prohibited."[30] It is this clause, known as the Missouri Compromise of 1820, that set the stage for the contention surrounding the Kansas-Nebraska Act. If followed, the Missouri Compromise should have acted much like the previously cited Article 6 of the Northwest Ordinance. The Kansas-Nebraska Act need not, like the Wisconsin Act, have made mention of slavery. It was prohibited. Nebraska and Kansas fell north of the Missouri Compromise's 36°30′ line and therefore should have been automatically assumed free. Herein lies the basic controversy and inconsistency inherent within the Kansas-Nebraska Act. Slavery therefore became *the* issue.

The slavery issue as treated in the Kansas-Nebraska Act embodied the doctrine of popular sovereignty. Stephen A. Douglas came to champion this doctrine as he fought for passage of the Kansas-Nebraska Act. It is set forth in the latter half of Section 14 of the act, reading as follows: "It being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way."[31] According to this clause, the citizens of Nebraska and Kansas were to be allowed to decide for themselves if their territory would allow slavery or not. Oddly, many looked to the Kansas-Nebraska Act as proof that Douglas's popular sovereignty was a failure. It is a common misconception to refer to the 1854 act as the great experi-

ment in popular sovereignty. In fact, only four years earlier, both New Mexico and Utah had become territories with similar clauses of popular sovereignty in their organic acts. The last proviso in Section 2 of the New Mexico Territory Organic Act of 1850 states, "And provided, further, That, when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission."[32] Identical wording is found also in Section 1 of the Utah Territory Organic Act.[33] They were the first great experiments of popular sovereignty in the territories.

Why then were the outcomes so different in the Great Basin and Southwest in 1850 when compared with Kansas and Nebraska in 1854? Two factors may be crucial. First, both Utah and New Mexico territories were somewhat isolated and unique geopolitically. It was not a simple matter to immigrate to either, and both territories had a cultural past that dictated the quantity and kind of immigration. Mormon settlement in Utah and the original seventeenth-century Spanish settlements in New Mexico meant established political and legal institutions would not be built completely anew. Kansas, adjacent to slave state Missouri, and Nebraska, adjoining free state Iowa, complicated migration to these completely new political creations. The motives behind, mode of, and participants in migration to these regions differed greatly. Finally, it is not insignificant that New Mexico and Utah's organic acts violated no previous geography-specific laws. Both territories were outside the Louisiana Purchase lands and beyond the reach of the Missouri Compromise. The Kansas Nebraska Act, however, rendered the Missouri Compromise moot.

Not only did the Kansas-Nebraska Act run counter to and "violate" the previous law but it acknowledged that violation and explicitly nullified the Compromise. This is detailed in the organic statute directly preceding the popular sovereignty clause in Section 14.

> That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force

> and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void.[34]

The Kansas-Nebraska Act's application of popular sovereignty contradicted the Missouri Compromise's declaration that slavery in those territories was to be "forever prohibited," and it voided the Compromise altogether. Thus the controversy surrounding the Kansas-Nebraska Act was not about the ideology in the doctrine of popular sovereignty itself but rather in its application to territories north of the 36°30′ line. Textually, the Kansas-Nebraska Act's clause of popular sovereignty did not significantly differ from the preceding New Mexico and Utah acts, but its application in Louisiana Purchase lands north of the 36°30′ line proved revolutionary. The additional clause voided previous legislation that had brought a certain degree of stability, if not predictability, to North-South tension.

Conclusion

This discussion of the Kansas-Nebraska Act of 1854 and how it compares with previous territorial organic acts is brief and general in both its approach and application. The actual text of the act contains more topics that have not been addressed, but they are not central to the political dilemma created by the act.[35] Nevertheless, tracing specific territorial trends from 1787 to 1854 reveals some significant comparisons and evolutionary history about the Kansas-Nebraska Act itself.

First, the organic act that created the territories of Kansas and Nebraska followed established patterns of territorial organic acts. Most major changes in territorial organic acts occurred before or during 1850 and were included in the New Mexico Territory and

Utah Territory acts. The Kansas-Nebraska Act introduced little in the way of legal innovation. Second, organic acts by definition created a geopolitical entity that was governed by local authorities but still ultimately subject to the superseding authority of the federal government. The Kansas and Nebraska territories were to be no different. Third, even the Kansas-Nebraska Act's infamous popular sovereignty clause was not necessarily innovative. It was patterned closely after the previous 1850 legislation. Its application, which had such contentious and violent effects, was not that it introduced a new and previously untested law or doctrine but rather that it revoked a significant and pivotal older law—the Missouri Compromise of 1820. Without those few lines in Section 14 that allowed for the application of popular sovereignty in lands previously declared forever free, the Kansas-Nebraska Act might have been passed with little objection and surely no civil disturbance in Kansas. The Kansas-Nebraska Act of 1854, in large part an ordinary document, nevertheless had a catastrophic impact on its nation's history—leading to turmoil, division, and national crisis without precedent.

Notes

1. It is formally titled "An Act to Organize the Territories of Nebraska and Kansas," and it is found in *Statutes at Large* 10 (May 30, 1854): 277–90. The text is in the appendix following chapter 8.
2. See Arthur Bestor, "Constitutionalism and the Settlement of the West: The Attainment of Consensus, 1754–1784," in John Porter Bloom, ed., *The American Territorial System* (Athens: Ohio University Press, 1973), 13–44.
3. These selected themes do not represent all of the topics covered in the Kansas-Nebraska Act or the aforementioned organic acts that will be used in comparison, but they do embody these main ideas and issues.
4. Kansas-Nebraska Act, 277.
5. United States, "An Ordinance for the government of the territory of the United States North West of the river Ohio," *Journals of the Continental Congress, 1774–1789*, 32 (July 13, 1787): 334 (hereinafter referred to as the Northwest Ordinance).
6. United States, "An Act proposing to the State of Texas the Establishment of her Northern and Western Boundaries, the Relinquishment by the said State of all Territory claimed by her exterior to said Boundaries and of all her Claims upon the United States, and to establish a territorial Government for

New Mexico," *Statutes at Large* 9 (September 9, 1850): 447 (hereinafter referred to as the New Mexico Territory Organic Act); and United States, "An Act to Establish a Territorial Government for Utah," *Statutes at Large* 9 (September 9, 1850): 453 (hereinafter referred to as the Utah Territory Organic Act).

7. See Northwest Ordinance, 336, 339. One further stipulation that appears is the requirement for landownership. It calls for the governor to own one thousand acres of land in the district. A similar requirement of five hundred acres is made for the territorial secretary and the territorial supreme court judges. As with like requirements for the holding of legislative offices and suffrage found in this 1787 statute, mandatory landownership is not included in any of the subsequent territorial organic acts. See Northwest Ordinance, 336.
8. United States, "An Act Erecting Louisiana into Two Territories, and Providing for the Temporary Government Thereof," *Statutes at Large* 2 (March 26, 1804): 283 (hereinafter referred to as the Orleans Territory Organic Act).
9. New Mexico Territory Organic Act, 447.
10. Kansas-Nebraska Act, 278.
11. See Northwest Ordinance, 336; Orleans Territory Organic Act, 283–84; and United States, "An Act Establishing the Territorial Government of Wisconsin," *Statutes at Large* 5 (April 20, 1836): 12 (hereinafter referred to as the Wisconsin Territory Organic Act).
12. Kansas-Nebraska Act, 278. The Northwest Ordinance contains no instruction for the transfer of power due to the absence or death of the governor.
13. Northwest Ordinance, 336; Kansas-Nebraska Act, 278.
14. This requirement is not different than at the state level, where state legislation cannot contradict federal law. When coupled with federal control over the appointment and removal of virtually all territorial officials (excepting the legislative assemblies and some officials appointed by the governor), the territorial government had immediate but not ultimate control over politics and law in the territory.
15. See Northwest Ordinance, 341. Similar lists of federal restrictions on territorial power can be found in all subsequent organic acts. The marginal heading usually reads to the effect, "Legislative power of the Territory defined." See also Orleans Territory Organic Act, 284–85; Wisconsin Territory Organic Act, 12; New Mexico Territory Organic Act, 449; Utah Territory Organic Act, 454; and Kansas-Nebraska Act, 279.
16. Northwest Ordinance, 337. The extra requirement included that a man must own fifty acres of land in the respective district and either be a U.S. citizen or have owned the acreage for two years.
17. Orleans Territory Organic Act, 284. It should be noted that the reason for not offering suffrage was because of the complexities in the transition of the New Orleans region going from a civil law heritage (from both Spanish and French colonial institutions) to a common law system. Previously, the

Northwest Ordinance planned for a three-stage progression from district to territory to state for new lands. It was not until the district qualified to become a territory with five thousand free male inhabitants that suffrage was available. The Orleans Territory Organic Act eliminated the preliminary district stage and started by creating a territory. Although the district stage had received ample criticism, it was still viewed as prudent to retain the right of suffrage upon territorial creation as had been done with the district stage. There was a sense that the inhabitants of French and Spanish descent in Orleans Territory were not yet fit for "full representative government." See Jack Ericson Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784–1912* (Pittsburgh: University of Pittsburgh Press, 1968), 146. For a fuller explanation of these issues, see Eblen, *Empires*, 138–70.

18. Wisconsin Territory Organic Act, 12. The New Mexico Territory Organic Act and the Utah Territory Organic Act used almost the same wording but without the distinction of voters being citizens of the United States. This is due to the fact that many residents in New Mexico were of Mexican or Spanish descent and many residents in Utah were from England and northern Europe. Instead these laws restricted voting to the inhabitants of the territories to accommodate for those "recognized as citizens by the treaty with the republic of Mexico, concluded February second, eighteen hundred and forty-eight." See New Mexico Territory Organic Act, 449; Utah Territory Organic Act, 454; and Eblen, *Empires*, 164–68.
19. Kansas-Nebraska Act, 279.
20. Kansas-Nebraska Act, 278.
21. Northwest Ordinance, 337.
22. To be chosen by a newly elected territorial representative body, nominees for the five-member legislative Council had to be residents of the respective districts and own five hundred acres of land there. See Northwest Ordinance, 338.
23. Orleans Territory Organic Act, 284.
24. Kansas-Nebraska Act, 279.
25. Kansas-Nebraska Act, 277–78.
26. Northwest Ordinance, 340.
27. The Wisconsin Territory Organic Act established that the governor would perform "the duties and receive the emoluments of superintendent of Indian affairs." Wisconsin Territory Organic Act, 11. This duty is retained in both the New Mexico Territory and Utah Territory Organic Acts, but is remitted in the Kansas-Nebraska Act to the federal government which is to have complete authority over Indian affairs.
28. Northwest Ordinance, 343.
29. Orleans Territory Organic Act, 286.
30. United States, "An Act to authorize the people of the Missouri territory to form a constitution and state government, and for the admission of such

state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," *Statutes at Large* 3 (March 6, 1820): 548.

31. Kansas-Nebraska Act, 283.
32. New Mexico Territory Organic Act, 447.
33. Utah Territory Organic Act, 453.
34. Kansas-Nebraska Act, 282–83.
35. Topics of merit for further examination include the organizational structure and activities of territorial legislative bodies, judicial officials and districts, wages of territorial officials, the relationship between territorial district courts and the U.S. Supreme Court, and other territorial officers, including the U.S. attorney, U.S. marshal, and officials appointed by the governor.